Court No.2

In the High Court of Uttaranchal at Nainital.

First Appeal From Order No. 1430 of 2001.
(Old No.692 of 1995)

The New India Assurance Company Ltd.
Haldwani through its Divisional Manager
Through Senior Divisional Manager,
The New India Assurance Company Ltd.,
Civil Lines, Allahabad.

.....Appellant/Opp.party.

Versus

(1)Smt.Jyoti Rani Widow of late Priya Lal,
(2)Km.Neetu minor daughter
(3)Master Yogesh minor son
(4)Master Mukesh minor son
Sons and daughter of late Priya Lal
.....Respondents-claimants
(5)Raju driver,
(6)Surendra Kumar S/o Jwala Ram,
R/o Hariyawala, Kashipur, Dist-Nainital,
(7)Oriental Insurance Company Ltd.,
through Divisional Manager, Oriental House,
P.Box No. 7037, A.25/27, Ashaf Ali Road,
New Delhi,
(8)Virendra Kumar owner Maruti Car,
Pandey Niwas, Kaladhungi Road,Haldwani,
District-Nainital.
..... Respondents/Defendants.

Sri T.A. Khan, learned counsel for the appellant.
Learned counsel for the claimants.

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Dated: 12th Aug., 2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been filed by the appellant-New India Assurance Company Ltd. under Section 110-D of the Motor Vehicles Act, 1939 against the judgment and award dated 27.05.1995 passed by Motor Accident Claims Tribunal/III Addl.District Judge, Nainital in Motor Accident

Claim Case No.272 of 1989 whereby the Motor Accident Claims Tribunal (*hereinafter referred to as the Tribunal*) awarded Rs. 3,00,000/- as compensation against the appellant-Insurance Company alongwith interest at the rate of 12% per annum from the date of application till the date of payment.

Brief facts of the case are that the deceased Priya Lal-husband of claimant No.1 was coming from Kashipur to Baajpur in Maruti Car on 11.2.1989 at 07.30 P.M. when Truck No.HRP 9805 caused the accident in which the deceased received severe injuries. As a result of injuries, he died on 12.02.1989 at 9.30 a.m. The deceased was 38 years of age at the time of accident and according to claimants he was earning Rs. 50,000/- per annum from the business.

The appeal was filed only on the ground that the appellant-Insurance Company had only statutory liability of Rs. 1,50,000/- while the award has been made by the Tribunal for Rs. 3,00,000/-. The learned counsel for the appellant submits that in view of the judgment of Apex Court in ***New India Assurance Co. Ltd. versus C.M. Jaya and others, reported in (2002) 2 Supreme Court Cases 278,*** the Insurance Company is liable to pay the statutory liability, which came to Rs. 1,50,000/-. Rest of the amount of award is to be paid by the owner of the vehicle in question. The owner was party before the Tribunal. The Tribunal has not bifurcated the amount. Therefore, we allow the appeal and provide that Rs. 1,50,000/- as statutory compensation alongwith interest shall be paid by the appellant-Insurance Company and rest of the payment shall be made by the owner of the vehicle in question. However, we do not find any infirmity or illegality in the

impugned order on the basis of evidence on record in determining the compensation payable to the claimants.

Therefore, the compensation awarded by the impugned order is hereby affirmed. The appeal is partly allowed. The case is sent back to the Tribunal for bifurcation of the amount to be paid to the claimants by the Insurance Company and owner of the vehicle in question as per provisions of the old Act. The Tribunal concerned shall decide the mater, after issuing the notice to the owner of the vehicle in question, within two months from the date of receipt of certified copy of this order. Sri Tanveer Alam Khan, learned counsel for the appellant-Insurance Company undertakes to ensure that the Insurance Company will place the order of this Court to the Tribunal concerned within fifteen days from today.

(B.S. Verma, J.) **(P.C.Verma, J.)**

P.Singh